UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1996/83
16 JANUARY 1996

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 3 of the provisional agenda

ORGANIZATION OF THE WORK OF THE SESSION

Note by the Secretariat

1. In its resolution 1995/30 of 3 March 1995, the Commission on Human Rights endorsed the recommendation of the Sub-Commission on Prevention of Discrimination and Protection of Minorities that the Centre for Human Rights organize a workshop on the possible establishment of a permanent forum for indigenous people. The Commission recommended that the outcome of the workshop be transmitted to the Working Group on Indigenous Populations at its thirteenth session and that the Working Group submit its views and suggestions on this question, through the Sub-Commission, to the Commission at its fifty-second session. The present note provides information relating to the possible establishment of a permanent forum for indigenous people in accordance with Commission on Human Rights resolution 1995/30.

2. At the invitation of the Government of Denmark, a workshop on the proposed permanent forum was held at Copenhagen from 26 to 28 June 1995. The report of the workshop (E/CN.4/Sub.2/AC.4/1995/7) was submitted to the Working Group on Indigenous Populations at its thirteenth session (24 - 28 July 1995). The comments and suggestions of the Working Group are contained in paragraphs 142-151 and 173-175 of its report to the Sub-Commission (E/CN.4/Sub.2/1995/24).

3. Subsequently the Sub-Commission adopted resolution 1995/39 of 24 August 1995, in which it requested the Secretary-General to transmit the report of

the workshop to Governments and intergovernmental and indigenous organizations inviting them to express their views on the forum, and to review existing mechanisms, procedures and programmes within the United Nations for the promotion and coordination of the rights of indigenous people. The Sub-Commission recommended that the permanent forum be established in the early part of the International Decade of the World's Indigenous People, that its mandate should include questions relating to human rights, development, the environment, health, education and culture, and that its membership consist of independent experts as well as representatives of Governments and indigenous organizations. It also recommended that the Centre for Human Rights organize a second workshop on a possible permanent forum for indigenous people.

4. The reports referred to in this note are available as background documents at the fifty-second session of the Commission on Human Rights.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1996/84
4 January 1996

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifty-second session
Item 3 of the provisional agenda

ORGANIZATION OF THE WORK OF THE SESSION

Report of the Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995

Chairperson-Rapporteur: Mr. José Urrutia (Peru)

Introduction

Establishment of the Working Group

1. By resolution 1995/32 of 3 March 1995 the Commission on Human Rights decided to establish an open-ended inter-sessional working group of the Commission on Human Rights with the sole purpose of elaborating a draft declaration, considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled draft "United Nations declaration on the rights of indigenous peoples" for consideration and adoption by the General Assembly within the International Decade of the World's Indigenous People. This decision was endorsed by the Economic and Social Council in its resolution 1995/32 of 25 July 1995.

2. The Working Group held 18 meetings during the period 20 November - 1 December 1995. A total 326 people attended the Working Group, including representatives of 61 Governments and 64 indigenous and non-governmental organizations.

3. This report is solely a record of the debate and does not imply acceptance of the usage of either the expression "indigenous peoples" or "indigenous people". In this report both are used without prejudice to the positions of particular delegations, where divergences of approach remain.

4. The Working Group was opened by a representative of the Centre for Human Rights on behalf of the Assistant Secretary-General for Human Rights and Coordinator of the International Decade of the World's Indigenous People, Mr. Ibrahima Fall. It was reported that, in accordance with the procedures established by the Commission on Human Rights in its resolution 1995/32, 99 organizations of indigenous people had applied for accreditation. Of these 78 organizations had been approved by the NGO Committee and 21 applications remained pending.

5. At its first meeting, the Working Group unanimously elected Mr. José Urrutia (Peru) as its Chairperson-Rapporteur.

Documentation

6. The Working Group had before it the following documents:

Agenda (E/CN.4/1995/WG.15/1/Rev.1);

Information received from Governments on consideration of a draft "United Nations declaration on the rights of indigenous peoples" (E/CN.4/1995/WG.15/2, E/CN.4/1995/WG.15/2/Add.1 and E/CN.4/1995/WG.15/2/Add.2);

Information received from intergovernmental organizations on consideration of a draft "United Nations declaration on the rights of indigenous peoples" (E/CN.4/1995/WG.15/3);

Information received from non-governmental and indigenous organizations on consideration of a draft "United Nations declaration on the rights of indigenous peoples" (E/CN.4/1995/WG.15/4);

Provisional and final list of attendance (E/CN.4/1995/WG.15/CRP.1 and E/CN.4/1995/WG.15/CRP.2);

Draft report of the Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 (E/CN.4/1995/WG.15/CRP.3, E/CN.4/1995/WG.15/CRP.4 and E/CN.4/1995/WG.15/CRP.5).

7. The following background documents were made available to the Working Group:

Technical review of the United Nations' draft declaration on the rights of indigenous peoples: note by the secretariat (E/CN.4/Sub.2/1994/2);

Draft declaration on the rights of indigenous peoples as agreed upon by the members of the Working Group at its eleventh session (E/CN.4/Sub.2/1994/2/Add.1);

Note by the International Labour Office on comments on the draft United Nations declaration on the rights of indigenous peoples (E/CN.4/1995/119);

Commission on Human Rights resolution 1995/32 on the establishment of a working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994;

Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1994/45 on the draft United Nations declaration on the rights of Indigenous Peoples (annex).

Participation in the session

8. The following States Members of the Commission on Human Rights were represented: Algeria, Australia, Austria, Bangladesh, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Finland, France, Germany, India, Indonesia, Italy, Japan, Malaysia, Mexico, Netherlands, Nepal, Nicaragua, Pakistan, Peru, Philippines, Russian Federation, Sri Lanka, Ukraine, United Kingdom of Great Britain and Northern Ireland and United States of America.

9. The following States Members of the United Nations were represented by observers: Argentina, Bolivia, Costa Rica, Denmark, Fiji, Greece, Guatemala, Honduras, Iraq, Israel, Jordan, Kenya, Morocco, New Zealand, Nigeria, Norway, Panama, South Africa, Spain, Sweden, Syrian Arab Republic, Thailand, United Republic of Tanzania, Uruguay and Viet Nam.

10. The following non-member States were represented by observers: Holy See and Switzerland.

11. The following United Nations body was represented by an observer: Working Group on Indigenous Populations.

12. The following non-governmental organizations in consultative status with the Economic and Social Council were also represented by observers:

Category I

World Federation of Democratic Youth and World Wide Fund for Nature.

Category II

Aboriginal and Torres Strait Islander Commission, Baha'i International Community, Friends World Committee for Consultation Society of Friends (Quakers), Four Directions Council, Indigenous World Association, International Centre for Human Rights and Democratic Development, International Committee for European Security and Cooperation, International Federation of Human Rights, International Indian Treaty Council, International League for the Rights and Liberation of Peoples, International Organization of Indigenous Resource Development, International Peace Bureau, International Service for Human Rights, International Society for Threatened Peoples, International Work Group for Indigenous Affairs, Inuit Circumpolar Conference, The Wittenberg Center for Alternative Resources, Pax Christi International, Procedural Aspects of International Law Institute, Women's International

League for Peace and Freedom, World Council of Churches, World Council of Indigenous Peoples, Worldview International Foundation and World Vision International.

Roster

Asian Buddhists Conference for Peace, Grand Council of the Crees, Indian Law Resource Center, International Council on Metals and the Environment, International Movement Against all Forms of Discrimination and Racism, Minority Rights Group and Saami Council.

13. The following organizations of indigenous people were represented by observers:

Aboriginal and Torres Strait Islander Social Justice Commissioner, Ainu Association of Hokkaido, Ainu National Congress, American Indian Law Alliance, Asociación Napguana, Association of the Shorski Peoples, Aukiñ Wallmapu Ngulam-Consejo de Todas las Tierras, Catawba Indian Nations, Central Land Council, Comisión Internacional de Derechos de Pueblos Indígenas de Sud America, Comisión Jurídica de los Pueblos de Integración Tahuantinsuyana-Cojpita, Comite Intertribal, Confederacy of Treaty Six First Nations, Consejo Nacional Indio de Venezuela, Cordillera Peoples Alliance, Educational and Cultural Organization to Advance Restoration and Transition, Ermineskin Cree Nation, Federación de Indígenas del Estado de Bolivar, Finno-Ugric Peoples' Consultation Committee, Iina Torres Strait Islander Corporation, Ikce Wicasa Ta Omniciye, Indigenous Women Aboriginal Corporation, International Confederation of Autonomous Chapters of the American Indian Movement, Jeunesse Nationale Populaire, Lummi Indian Business Council, Mohawk Nation Council of Chiefs, Montana Cree Nation, Nepal Federation of Nationalities, Ngaati Te Ata, Ngaiterangi Iwi Incorporated Society, South and Meso American Indian Rights Center, Tea Amaro Runa, Te Kawau Maro, The Mejlis of Crimean Tatar People and Unidad de Capacitación e Investigación Educativa para la Participación.

Organization of work

14. During the 1st meeting the provisional agenda was amended to the effect that the name of the Working Group was changed to "Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995" and agenda item 4 to "Consideration of the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled draft "United Nations declaration on the rights of indigenous peoples". The agenda as amended was adopted.

15. Participants agreed that under agenda item 4 a general discussion on the draft declaration as well as a discussion on the scope of application of the draft declaration would take place before beginning the first reading of the draft "United Nations declaration on the rights of indigenous peoples" as adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1994/45 of 26 August 1994.

16. The Chairperson-Rapporteur, following consultations with Governments and indigenous organizations, proposed that participants review the draft declaration part by part in order to identify where there was general consensus and which articles would require greater deliberation. In this respect, the Chairperson-Rapporteur proposed that, on completion of the debate on the scope of application of the draft declaration, the Working Group consider first the title and preambular paragraphs, and then parts I to IX of the draft declaration. He proposed that, at this stage, the Working Group should not try to begin the process of drafting as such. The proposal of the Chairperson-Rapporteur was agreed upon by the Working Group. However, several Governments felt that certain articles contained in the draft were non-controversial and could be adopted at first reading. In addition, some Governments and many indigenous organizations called for the speedy adoption of the declaration.

17. At the beginning of the 2nd meeting, which took place on 20 November, a short ceremony was held at the request of the indigenous participants after which the Chairperson-Rapporteur, at the request of many governmental and indigenous delegations, paid tribute to the Nigerian writer and human rights activist, Mr. Ken Saro Wiwa, who had given his life to the cause of human rights.

18. Before the 8th meeting, the Chairperson-Rapporteur of the Working Group on Indigenous Populations, Ms. Erica-Irene A. Daes, addressed the Working Group.

19. At the 18th meeting, the representative of Canada announced that her Government was proposing to host the United Nations expert seminar on practical experiences regarding indigenous land rights and claims from 24 to 28 March 1996. A formal communication would be sent to the Centre for Human Rights in due course.

20. At the 18th meeting, the present report was adopted by the Working Group.

General debate

21. In general, both Governments and indigenous organizations agreed that the draft "United Nations declaration on the rights of indigenous peoples" as adopted by the Sub-Commission constituted a sound basis for the discussions to come.

22. Some Governments stated that the draft declaration contained social or political aspirations and not rights, while others, supported by many indigenous representatives, were of the opinion that it contained minimum standards. Several Governments pointed out that a declaration has no legally binding force. Others added that although the draft declaration was not legally binding it was politically binding and carried with it a great moral obligation to live by its provisions.

23. Many Governments and some indigenous organizations made the point that above all, the declaration should be clear and unambiguous. Some Governments pointed out that the draft declaration contained certain unclear, contradictory or repetitive provisions that were in need of revision. These

Governments felt that this was the only way to ensure universal application. On several occasions reference was made to General Assembly resolution 41/120 of 4 December 1986 containing guidelines in developing international instruments in the field of human rights. It was generally stated that the draft declaration should be consistent with the existing body of international human rights law, be sufficiently precise to give rise to identifiable and practicable rights and obligations and attract broad international support. There appeared to be a consensus that a strong and effective declaration should be adopted within the International Decade of the World's Indigenous People.

24. In this respect, many indigenous organizations stated that the draft should not be a mere repetition of rights laid down in other instruments but should be a reflection of existing progressive legal concepts. Many indigenous organizations were of the opinion that the draft as it stands reflected existing international law and referred in this respect specifically to the right of self-determination and collective rights as examples. It was stated by several indigenous representatives that the draft restates existing law established by article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and that indigenous peoples should not be discriminated against in regard to this right. Some Governments expressed their satisfaction with including self-determination as stated in article 3 of the draft, and also expressed agreement with the use of the term "peoples" in the draft. On the other hand, several Governments identified those rights as being in need of further discussion in order to set their scope and contents and determine their compatibility with existing international law. Some Governments stated that these were not rights and could not be considered a reasonable evolution from existing human rights law.

25. An indigenous representative read a resolution, adopted by consensus by those indigenous organizations which had attended a preparatory meeting, calling for the adoption by the Working Group of the draft declaration as adopted by the Sub-Commission. It was claimed that, as such, it reflected minimum standards for the survival of indigenous peoples.

26. Certain Governments expressed their regrets that the Committee on Non-governmental Organizations had not been able to complete its work prior to the meeting of the Working Group. However, they also expressed overall satisfaction with the work of the Committee and were confident that all applicants would be considered before the next meeting of the Working Group. Some Governments and indigenous organizations suggested that the mandate of the Voluntary Fund for Indigenous Populations be broadened so as to allow indigenous representatives to benefit from assistance from the Fund to attend the Working Group.

Scope of application

27. During the general discussion and the 6th meeting, which was specifically reserved for this purpose, the issue of the scope of application of the declaration was extensively discussed. It was stated by a number of delegations that the issue of defining "indigenous people" was crucial in the context of such a declaration. The genesis of the issue in terms of its

specificity to certain regions was referred to. Some Governments also referred to the process of decolonization which resulted in the birth of modern nations of ancient peoples, and deplored efforts to look for "indigenous populations" within indigenous nations. In this context, in a statement on behalf of one regional group, it was maintained that the "indigenous people" question relates to the unique situation of the original inhabitants of certain regions who were, at a point in history, overrun by settlers from overseas, dispossessed and reduced to marginal groups in their own land; and that the situation had been generally different in other regions. The group felt that since there was no established definition of "indigenous people", and that mere self-identification cannot be an objective criterion for the envisaged declaration, it was crucial to have a clear understanding of the scope of the declaration before a meaningful reading of the draft could be undertaken.

28. Several Governments expressed the opinion that the absence of a definition of the term "indigenous people" in the draft declaration would lead to confusion and would limit the acceptability of the draft. Other Governments disagreed. Some Governments also stated that the concept of "indigenous people" was not universally applicable and was limited to certain regions. Some Governments considered that applying the concept universally would lead to dilution of the issue, thus harming the true beneficiaries of the rights enshrined in the declaration. Some Governments stated that the issue of a definition had to be solved before a meaningful reading of the draft could take place. It was also pointed out that self-identification cannot be an objective criterion, and that this had provided scope for many pretenders to make their appearance at the Working Group on Indigenous Populations. Some Governments noted that in the event of the scope not being focused, the declaration would have to address the overall marginalization of indigenous cultures in the macro-sense which would subject global mainstreaming to review. In this regard, some participants referred to the possibility of examining the working definition contained in the Study on Discrimination against Indigenous Populations prepared by Special Rapporteur Martínez Cobo or the definition contained in the relevant conventions of the International Labour Organization.

29. Many Governments and indigenous organizations stated that the historical and ethnic complexity involved when defining "indigenous people" would make it impossible to cover all existing situations under such a definition. They expressed the view that defining "indigenous people" would, therefore, lead to the creation of an inflexible and exclusive concept. In light of this, it was, according to some Governments, better left to the respective countries themselves to determine the scope of application of the declaration at the national level.

30. In a statement on behalf of all the indigenous organizations participating, it was maintained that a definition of indigenous peoples was unnecessary and that to deny indigenous peoples the right to define themselves was to delimit their right of self-determination. It was claimed that the right of self-determination required that indigenous peoples define themselves without outside interference. They reiterated, together with several Governments, the need for a declaration with universal application.

31. Several Governments and indigenous organizations pointed out that the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities did not contain a definition and that that was not considered an obstacle at the time of adoption. Others stated that the issue of a definition should not prevent the Working Group from making progress with regard to giving the draft declaration its first reading. Others suggested that the question should be left with the Working Group on Indigenous Populations for further elaboration and be taken up at a later stage. Some Governments, however, also stated that "minority", having a clear numeral connotation, was more definitive than "indigenous", and that the Declaration on Minorities specifies "national or ethnic, religious and linguistic" as qualifiers. Furthermore, these Governments stated, in spite of the foregoing, the lack of definition has appeared as a major issue in the Sub-Commission's Working Group on Minorities.

I. DISCUSSION OF THE TEXT OF THE DRAFT "UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES"

A. Title and preambular paragraphs

32. A brief exchange of views took place concerning the title of the draft declaration. Many Governments argued that the title should be considered when the substantive issues, in particular relating to collective rights, had been discussed.

33. Many Governments stated that, since a preamble is the philosophical and conceptual framework of a draft declaration, it should be discussed after a detailed examination of the operative paragraphs of the draft declaration had taken place. They felt that this would be the only way by which contextual consistency between the substance of and the philosophy behind the draft declaration could be achieved. With reference to the term "peoples" and the concept of collective rights as contained in the title and the preamble of the draft declaration, some Governments added that these were substantial issues and should be discussed after a debate on the operative paragraphs had taken place.

34. Some Governments and indigenous organizations stated that the consideration of the draft declaration, and therefore the preamble, went beyond the mere exercise of restating provisions of existing instruments. The contents of the draft declaration were not limited to individual human rights only. They explained that it was therefore important for participants to be open-minded towards new concepts when considering the draft declaration. Many indigenous organizations stated that the preamble was fundamental to the overall draft because it lays the philosophical foundations and contextual clauses and it is responsive to the intent of the declaration. They argued for the consideration of the preamble before the operative paragraphs.

35. Several Governments suggested that the preamble as currently drafted was too detailed and internally inconsistent. They called for a streamlining of the preamble so that it would only contain the most important concepts and be consistent with the substantive part of the declaration and international law. In this respect, reference was made again to General Assembly resolution 41/120. Several Governments called for the clarification of

certain concepts contained in the preamble, including terms such as "self-determination" and "peoples". Most indigenous organizations noted that article 3 is simply a restatement of well-established international law, namely article 1 of both the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. The draft declaration, article 3, does not create new law, they stated. Numerous indigenous organizations also stated that there must be no discrimination against indigenous peoples in the enjoyment of this right. Indigenous organizations objected to any suggestion or proposal to add any limitations or qualifications.

36. Many indigenous organizations referred to the resolution adopted by consensus by those indigenous organizations which had attended a preparatory meeting which called for the adoption of the title and the preamble as it stood. They stated that they considered themselves to be "peoples" and that any attempt to define them otherwise would be discriminatory. They also considered it to be an attempt to deny them their inherent right of self-determination. Several indigenous organizations reiterated that the equality between indigenous peoples and all other peoples must be recognized in the declaration.

37. Some Governments stated that they had no difficulty with the use of the term "peoples" in the title and the preamble since it reflected the collective approach needed to address the rights, identity, needs and problems of indigenous peoples. One Government suggested that, in the absence of a clear focus of scope of application, the draft declaration should reflect the situation of indigenous people throughout the world, to be understood to include indigenous people with their own nation-States, and that the declaration should reflect the continuing threat to indigenous cultures and cultural attributes in the face of mainstreaming international culture. Some Governments also stated that the reference to nations was with regard to the human population and did not indicate either States or Governments. Several Governments and indigenous organizations opposed this suggestion, stating that peoples, not "nations", are subjects of international human rights law.

38. A large number of Governments were opposed to the use of the term "peoples" since it would imply that indigenous people were considered to be subjects of international law and as such would be entitled to the right of self-determination and sovereignty over natural resources. Some Governments expressed the concern that the use of the term "peoples" would also lead to a denial of the rights of individuals in favour of collective rights.

39. In answer to the claim that collective rights did not exist in international human rights law, several Governments and indigenous organizations stated that such rights existed in various international instruments and referred to the right of self-determination as reflected in the Charter of the United Nations and the International Covenants on Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide and the African Charter on Human and People's Rights, as well as norms relating to peace and security, the environment and development. Some indigenous organizations asserted that the combined rights of the individuals of a group constituted the rights of the collective and could not therefore, lead to a denial of the rights of individuals.

40. A few Governments suggested including a reference to International Labour Organization Convention No. 169 in the preamble as an important and the latest legal instrument aimed at protecting the rights of indigenous people. Several Governments and all indigenous organizations opposed this suggestion on the grounds that the Convention had received only a few ratifications and could therefore not be considered universal. Some Governments suggested including references to the rights of indigenous women and children in the preamble.

B. Part I

41. It was generally felt that Part I was of crucial importance for the draft declaration because it contains the general principles in the context of which the rest of the substantive articles would have to be placed and against which they would be interpreted. Several Governments stated that the purpose of the draft declaration was to guide States in the development of a cooperative relationship with the indigenous peoples on their territory and vice-versa. According to these Governments, this underlined the importance of the general principles contained in Part I. Many delegations stressed that their views on this and other parts of the draft declaration were preliminary. Several Governments stated that the lack of definition and scope of application made it difficult for them to comment on the substance of the draft declaration.

42. Extensive discussions took place on the right of self-determination as contained in article 3 of the draft declaration. Much of the debate centred on the scope of the right of self-determination as phrased in the draft declaration and, consequently, whether or not the right of self-determination as applied to "indigenous peoples" phrased in the draft declaration was in accordance with international law. Indigenous organizations stated that the term "indigenous peoples" should be adopted and that the right of self-determination should attach to the term. Related issues such as the use of the term "peoples" and the distinction between individual and collective rights also received extensive coverage in the discussions.

43. Many Governments were of the view that article 3 went beyond existing international and national law and practice in that the right of self-determination had to be placed in the historical context of decolonization. Several indigenous organizations stated that such an approach would lead to freezing international law in time and inhibit progress. It was argued by some Governments and most indigenous organizations that the right of self-determination was also applicable to internal, non-colonial situations. The gaining of national independence by a State through decolonization does not extinguish the applicability of the right of self-determination of indigenous peoples. Certain Governments stated that internal self-determination includes the continuing right of peoples to decide how they should be governed and to participate in the political process, and the right of distinct peoples within a State to make decisions on their own affairs.

44. Several Governments were of the opinion that indigenous people were not "peoples" within the context of international law and as such were not entitled to the right of self-determination. Indigenous organizations stated that the right of self-determination as contained in article 3 was consistent

with international law and referred to article 1 of both the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights on which article 3 was based.

45. Many Governments stated that the ramifications of the right of self-determination as contained in article 3 needed to be clarified. It was stated that it was not so much the right itself but its contents and the consequences of its exercise that caused certain concerns. In this respect, many Governments approached the issue from the point of view that a balance was needed between the right of self-determination of indigenous peoples and the territorial unity and integrity of States.

46. In this regard, certain Governments took the position that the right of self-determination as referred to in article 3 needed to be qualified, or elaborated in a way which preserves the territorial integrity of States and their constitutional frameworks, where these meet current human rights standards. Some Governments were not yet ready to propose what form a qualification should take while others referred to instruments such as the International Labour Organization Convention No. 169 and the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations which both contain provisions guaranteeing the territorial and political unity and integrity of States. Several Governments stated that inclusion of the right of self-determination was acceptable to them if a qualification was included in the declaration. One Government stated that such a balance was contained in article 31 of the draft declaration. Certain Governments stated that their legal systems recognized indigenous peoples as "peoples" in the legal sense but this had not led to claims of independence.

47. All indigenous organizations opposed the inclusion of any limitation or qualification of article 3. They referred instead to the reality of many indigenous communities which would make secession practically impossible and was not the wish of indigenous peoples. They argued, however, that qualifying or limiting the right of self-determination would be discriminatory and is therefore prohibited as a matter of legal principle. They also stated that the right of self-determination was an inherent right Governments could neither give nor take away. Some indigenous organizations stated that a balance between the right of self-determination of indigenous peoples and the territorial and political unity and integrity of States would result from the recognition and respect of that right to self-determination. In that regard harmonization would be sought by viewing the right of self-determination as containing a procedural right that could be exercised through negotiations between indigenous peoples and Governments, and realizing that the outcome of exercising the right of self-determination would not lead to secession but could take many forms.

48. Several Governments felt that it was necessary to modify the scope of the term self-determination, in order to clarify its meaning and define its scope and development. The purpose of such modification would be to find mechanisms of self-determination that would provide indigenous peoples with tools through which they would be able to articulate their needs and demands within the

legal and social structures of the States in which they live. In this respect the use of alternative terms such as "autonomy" and "self-government" was considered.

49. The question of self-determination also brought to the fore the issue of collective and individual rights. In general, it was stated by Governments that clarification of the nature of both categories of rights and their respective and combined role was needed.

50. Several Governments stated that collective rights should be seen as a reinforcement for the enjoyment of individual rights and that their exercise should not lead to the denial of individual rights. They suggested language similar to that contained in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities whereby persons may enjoy human rights individually but that they may be exercised individually as well as in community with others. In the same vein, reference was made to the Vienna Declaration and Programme of Action wherein it is stated that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary.

51. Indigenous organizations stated that the right of self-determination as a collective right was a prerequisite for the full enjoyment of all human rights, and as such there was no tension between the two categories. They argued, supported by several Governments, that a more flexible approach was needed to the traditional classifications of individual and collective rights, which were not mutually exclusive.

52. With regard to the articles contained in Part I other than article 3 on the right of self-determination, several more specific suggestions and comments were made. Frequent mention was made of General Assembly resolution 41/120 and the technical review of the draft "United Nations declaration on the rights of indigenous peoples".

53. Some Governments stated that both articles 1 and 2 were acceptable as currently drafted. Other Governments said that revision may be necessary to ensure consistency with existing international human rights standards.

54. With regard to article 4, several Governments stated that they supported the objective of the article but were of the opinion that its language had to be revised. More specifically, the term "legal systems" met with several reservations and it was suggested that it be clarified. A few Governments stated that article 4 was acceptable as drafted. Several Governments referred to comments made during the technical review on the need to consider possible overlaps with articles 8, 21 and 33.

55. Several Governments stated that article 5 as currently drafted was acceptable to them. Some Governments attached some reservations to this article in the light of the reference to "citizenship" in article 32.

56. Several Governments suggested that, considering the importance of the general principles contained in Part I, an article on gender discrimination be inserted. In this regard, it was suggested that article 43 of the draft which guarantees equal rights and freedoms to male and female indigenous individuals could be moved to Part I, an idea supported in the technical review.

57. All indigenous organizations called for the adoption of Part I as it stood, especially article 3.

C. Part II

58. In general, participants supported the objectives of Part II which aimed at protecting the physical and cultural identity of indigenous people. All indigenous organizations, and one Government, called for the adoption of Part II as it stood. In addition, some called for its reinforcement through clarification and reorganization.

59. During the discussions of Part II, the issue of collective rights was contentious. A few Governments again stated that collective rights were not recognized by international law and that they therefore preferred an approach which aimed at protecting the rights of individuals, the combined exercise of which would protect the collective. Other Governments and indigenous organizations stated that collective rights did already exist in international law. They did not object to the inclusion of collective rights in the draft declaration as long as their contents were clear and they were compatible with international law and relevant national policy already recognizing certain collective rights.

60. All indigenous organizations restated that to deny indigenous peoples their collective rights would be a denial of their identity and being. They reiterated the need to include collective rights in the declaration. Some indigenous organizations reminded participants that all the articles in Part II should be viewed in connection with article 3 on self-determination.

61. With regard to article 6, several Governments expressed the difficulties they had with the phrase "under any pretext" as contained in its first paragraph. They stated that there were circumstances under which it was in the child's interest to be removed from their families and communities, whether the child was indigenous or non-indigenous. It was felt that in these circumstances indigenous people and communities should not receive preferential treatment over others since this could turn out to be harmful to the child.

62. Some Governments noted that while they did not deny that indigenous peoples were entitled to collective rights, they felt that, in the light of the need for clarity and consistency, it was not always necessary to use the term in every article. The term could, for example, be deleted from articles 6 and 7 without changing the content or protective strength of these articles. A non-governmental representative stated that it would perhaps be more appropriate to deal with the issue of collective rights article by article in order to see if the respective formulations of collective rights in the draft represented the correct expression of the right in question.

63. A number of Governments stated that the term "distinct peoples" as contained in articles 6 and 7 should be clarified vis-à-vis the unity of the nation and the sovereignty of States. They did not believe that international law confers a collective right on groups of people to exist in peace and security as distinct people.

64. Several Governments expressed reservations with regard to the terms "ethnocide" and "cultural genocide" contained in article 7. They stated that these terms were not clear concepts to be usefully applied in practice. Others said they had no problems with the term "genocide", which they considered to be as stated in the Genocide Convention, but did express reservations about the adjective "cultural" and the term "ethnocide", or sought clarification as to the meaning of these terms. Several indigenous organizations stated that article 7 was merely a restatement of the provisions of the Genocide Convention and reiterated the historical importance of article 7. They added that the terms "ethnocide" and "cultural genocide" were important because of the history and impact of colonization. A representative of a non-governmental organization expressed the view that the Genocide Convention was not constructed in terms of rights, but deals with prohibitions, individual responsibility and group protection. Translating these prohibition of acts into rights would require a certain group element such as is found in articles 6 and 7 of the draft declaration.

65. A number of Governments felt that the prohibition of any form of population transfer as laid down in article 7 (c), forcible removal as laid down in article 10 and relocation as laid down in article 11 (c) was too restrictive. They stated that circumstances could arise where either the security of the State or the well-being of the indigenous people concerned required such transfer. Indigenous organizations stated that the provisions should protect indigenous people from forcible removal or relocation.

66. Governments also expressed concerns with regard to the reference to lands and territories as contained in articles 7 (b) and 10. They felt these references to be unclear and confusing with regard to a State's sovereignty over its territory. One Government proposed to substitute these references to lands and resources with the language of Agenda 21 adopted by the United Nations Conference on Environment and Development. Indigenous organizations supported the language of article 7 (b) because of its consistency with indigenous perspectives of their profound relationship with the environment.

67. During the discussions on article 8, several Governments stated that the precise intent of the article was unclear. A few Governments expressed their concern with regard to the right of self-identification and the general issue of individual versus collective rights in questions of membership. It was felt that this was a procedural right which needed further elaboration. A few Governments supported including the right to self-identification in the declaration. Some Governments and indigenous organizations stated that the right of self-identification was an integral part of the right of self-determination and needed to be included in the declaration.

68. With regard to article 9, several Governments expressed their reservations about the term "nations" because of the possible confusion with the term "nation-States". Some Governments explained that they considered this term to mean "communities" and, as such, that it would be acceptable. Indigenous organizations affirmed the use of the term "nation" as an accurate identification of their political and legal status. Some Governments noted that article 9 raises the additional question of an individual's right to non-discrimination and due process in questions of individual membership versus group control.

69. Several Governments were of the view that international humanitarian law protected all individuals and that indigenous people were not entitled to special standards of protection, as laid down in article 11. It was felt that no treatment should be granted to indigenous people which was not available to other segments of the population of a State. One Government emphasized that indigenous peoples should not receive adverse discriminatory treatment. Some Governments were of the view that article 11 as it stood was inconsistent with international humanitarian law. A number of Governments expressed their reservations about article 11 (a) in view of existing national laws with regard to conscription from which indigenous individuals could not be exempted. Several Governments stated, with regard to article 11 (b), that children as such should not be recruited into the armed forces, regardless of whether they were indigenous. In this regard, some Governments felt that, in the light of existing international and national laws, the article was superfluous.

70. Several indigenous organizations stated with regard to article 11 that history had shown that indigenous peoples needed protection and special measures in times of armed conflict in order to survive collectively as well as individually.

D. Part III

71. There appeared to be consensus amongst participants that Part III was the least problematic part of the draft. Some Governments noted, however, that the provisions were over broad and needed to be clarified.

72. Several Governments expressed a general concern with regard to the rights of third parties to ownership and access to certain sites as these may be affected by the provisions of Part III. A few Governments and several indigenous organizations were of the opinion that articles 24 and 29 of the draft dealing with cultural and intellectual property could be incorporated into Part III.

73. Several Governments stated that the provisions contained in Part III should be consistent with non-discriminatory provisions applicable to all people of a State and that their exercise could be limited as prescribed under law to protect public order, public safety and human dignity.

74. Several Governments stated that the scope of certain terms contained in Part III had to be clarified and their consistency with international law, especially intellectual property law, reviewed. Other Governments stated that the articles in Part III contained repetitive language and that they touched

in summary fashion on several separate, difficult issues which demand more precise and considered treatment. With regard to article 12, several Governments stated that the term "restitution" had to be clarified, while others stated that they could not agree to an open-ended obligation of restitution of cultural and similar property since this was not at present a rule of international law. One Government, referring to article 14, pointed out the importance of the right to use one's own language before the authorities instead of a language which can be understood. Several indigenous representatives and a few Governments called for the adoption of Part III as drafted.

E. Part IV

75. A number of Governments stated that, although they supported the objectives behind the provisions of Part IV, they considered that the provisions were too broad and that clarifications were in order. Some Governments considered that the financial implications of the provisions should be borne in mind. In the light of the importance of the provisions of Part IV for the maintenance of the identity of indigenous peoples, one Government and several indigenous organizations called for the adoption of Part IV as drafted.

76. Some Governments were of the opinion that the term "effective measures" as repeatedly used in Part IV needed clarification. Other Governments stated that the financial and social policy implications of implementation of the provisions of Part IV had to be kept in mind. Indigenous organizations identified the need for greater financial resources to give effect to the rights contained in Part IV.

77. Some Governments expressed reservations with regard to article 15 because of its inconsistency with the requirements of national educational systems. They noted that article 15 could be read to imply that indigenous persons have the right to free education, at all levels. With regard to article 14, some Governments noted that the sympathetic portrayal of indigenous cultures in education and public information is a value, not a right. They also noted that the language of article 17 is over broad in that it implies a legal responsibility to regulate media so as to provide any group with access thereto.

78. With regard to paragraph 1 of article 18, several Governments stated that the paragraph should not form an obstacle to positive discrimination measures and equal opportunity programmes; it was also stated that the reference to international labour law should be understood to consist of those international labour law provisions to which States were parties. It was suggested that article 18 could be placed in Part V.

F. Part V

79. A few Governments and all indigenous organizations called for the adoption of Part V as it stood and stated Part V was of critical importance for all indigenous people as it would facilitate equal participation in national society. Some indigenous organizations stated that Part V was closely connected to the right of self-determination as contained in

article 3. Most Governments recognized the importance of Part V but also highlighted the complexity of the issues involved and called for further clarification and reformulation of the provisions.

80. Many Governments expressed their concerns with regard to the contents of these rights vis-à-vis the rights of other citizens in their countries. Some Governments stated that they could not accept separate political, legal, economic and social systems for indigenous people since this would be discriminatory towards the rest of the population of the State and infringe upon the right to equal treatment. Other Governments stated that the rights contained in Part V would have to be carried out within the framework of existing democratic State structures and could not infringe upon constitutional provisions that regulate the election of governmental representatives and the passing of legislation. With regard to the latter aspect, it was stated that in a democratic society all people have equal rights to participation and decision-making.

81. Several Governments opposed the phrase "if they so choose" in article 20 because of the effects it might have with regard to their electoral systems. Other Governments objected to the term "consent" in article 21 since it would give indigenous people a right of veto. With regard to article 22, some Governments expressed the view that indigenous people did not have the legal right to claim priority access to the State's resources through "special measures". With respect to article 23, some States noted that it was not appropriate to refer to collective development as a right. One representative stated that special measures were part of his Government's national policy, and that article 22 should be strengthened. It was suggested that article 22 was not exhaustive, and could include a reference to business opportunities and education. Several Governments expressed their concerns with regard to the impact article 24 might have on the maintenance of good health within society. They noted that the scope of the provision needed to be narrowed and clarified.

82. Indigenous organizations underlined the fundamental importance of Part V to ensure their effective and meaningful participation in policy- and decision-making of States and as an element of the right of self-determination. Further, many indigenous organizations asserted that the language of Part V did not create preferential measures for indigenous peoples.

G. Part VI

83. Many Governments expressed their reservations with regard to the provisions contained in Part VI and stated that its wording had to be clarified and adjusted. Several Governments stated that ultimate control over the land must lie with the Government of a country and that land rights could only be considered within the framework of national legislation. Several Governments stated that the term "territories" as frequently used in Part VI was unacceptable because of the confusion it might create and the implications it might have with regard to the sovereignty of a State over its territory. Several Governments stated that the phrase "which they have traditionally owned" contained in articles 25 and 27 was too broad and far-reaching and had to be redrafted.

84. All indigenous organizations underlined the critical importance of Part VI, especially with regard to the right of self-determination, for the survival of indigenous peoples because of the spiritual relationship indigenous peoples have with their land. Indigenous organizations stated that the ownership and control of their lands, territories and resources are essential to the exercise of self-determination and continued health of their communities. Many highlighted the profound spiritual, cultural, traditional and economic relationship indigenous peoples have to their total environment, which required that they have certain rights to the land on which they live. Without explicit recognition of their land rights, indigenous peoples would remain vulnerable to more powerful political and economic forces. Explicit recognition of the lands, territories and resources that "they have traditionally owned, occupied or used" was necessary because of the long history of illegal or unjust dispossession. Several indigenous organizations commented on the important principle of compensation and restitution. In addition, several indigenous organizations considered their rights to the land as treaty rights which they had never ceded to the States in which they live. Many indigenous organizations called for the adoption of Part VI as it stood.

85. Several Governments stated that the draft declaration, and in particular Part VI, should be flexible enough to take into account the diversity in the national situations of indigenous people. In addition, several Governments stated that the provisions of Part VI could not run counter to national policies and regulations of nature conservation, strategic resources and State security. Other Governments stated that land alienation for the common good or legitimate sale should be recognized but added that in such cases compensation or other forms of reasonable redress should be provided to indigenous people. Some indigenous organizations stated in this regard that the term "common good" was too broad and open to abuse.

86. Several indigenous organizations expressed their concerns over the effects of the globalization of trade on the resources on their lands. Indigenous organizations reaffirmed the importance of safeguarding land rights for present and future generations.

H. Part VII

87. Many Governments expressed their reservations with regard to the provisions in Part VII. Although several Governments expressed their support for the spirit and intent of Part VII, further clarification and adjustments were needed. All indigenous organizations emphasized the great importance of Part VII, especially with regard to the right of self-determination and the relations between indigenous institutions and States. Indigenous organizations expressed their strong support for the provisions in Part VII and endorsed its adoption substantially in its present form.

88. Many Governments reiterated their reservations on the use of the term "self-determination" owing to the confusion and inconsistency it might create with regard to international law. However, several Governments expressed their support for the right to autonomy and self-government for indigenous people in internal and local affairs as expressed in article 31. Some Governments also voiced their support for the adoption of article 31 substantially as drafted. One Government stated that the right to self-

determination of indigenous peoples should be seen in the context of basic principles of international law, and that various types of power-sharing arrangements could be established without disrupting the territorial unity of States. Indigenous organizations stated that article 31 expresses their inherent right to self-determination.

89. Non-governmental participants said that no United Nations declaration can directly create binding legal obligations, so no State would be required to amend its laws were the declaration to be adopted. One State noted that the declaration, while not legally binding, was "politically binding" on States and that any rights recognized in the draft declaration should also be recognized in domestic legislation. Indigenous organizations stated that the moral and political obligations of implementing the declaration in good faith required only that the goals or purposes be met.

90. Some Governments were of the opinion that the reference to "autonomy", "self-government" and "non-member" entry rights in article 31 was drafted with the situation of indigenous people living on reservations in mind. Further elaboration was therefore required with regard to the scope of these concepts. Several Governments also stated that they could not accept any separate taxation mechanisms for indigenous people in order to finance indigenous autonomous functions outside the national framework.

91. Most Governments expressed their reservations with regard to the right of indigenous people to determine their own citizenship, as formulated in article 32. The concept of separate citizenship for indigenous people was considered unacceptable by many Governments as it would be inconsistent with national legislation. One Government and some indigenous organizations stated that it could be possible to have separate indigenous citizenship, in addition to the citizenship of the home country; regional and provincial citizenship were cited as examples. Many indigenous organizations stated that the right to determine their own citizenship in accordance with their customs and traditions was an essential part of the exercise of their right to self-determination, and that this right was an inherent right.

92. Some Governments expressed their preliminary reservations with regard to the provisions concerning the promotion, development and maintenance of indigenous juridical customs, traditions, procedures and practices (art. 33). However, it was emphasized that the juridical traditions and customs must be consistent with international and domestic law as far as individual human rights are concerned. They also noted that this provision could not be seen as endorsing the right of indigenous people to opt out of the national legal system.

93. Many Governments and indigenous organizations underlined the importance of the provisions concerning indigenous cross-boundary contacts (art. 35). However, some Governments expressed the view that the right to control entry through the State's customs and the State's immigration requirements were relevant.

94. With reference to treaties and other agreements between indigenous people and the States concerned (art. 36), some Governments stated that conflicts and disputes concerning these treaties should be resolved in accordance with

domestic remedies and that it would not be appropriate for them to be subject to international consideration. Many indigenous organizations stated that treaties between States and indigenous peoples are international agreements, and that disputes concerning these treaties should therefore be submitted to international bodies.

I. Part VIII

95. Many Governments stated that a declaration is non-binding and could therefore not create obligations or requirements for States. In this regard, specific reference was made to article 37 which requires States to adopt and include the rights contained in the declaration in national legislation. With reference to article 37, several Governments stated that it was at the discretion of States to set fiscal and policy priorities and that a non-binding instrument could not infringe upon this discretion. Some Governments noted that, to be consistent with General Assembly resolution 41/120, the term "rights" in the declaration should be reserved for those duties that Governments owe their people, the breach of which generally gives rise to a legally enforceable remedy. Indigenous organizations stated that in the context of the draft declaration, the general duty of States to make available both opportunities and resources to indigenous peoples must be specified.

96. Several indigenous organizations stated that although the draft declaration would not be binding on States, it was nevertheless necessary to include provisions dealing with implementation as a guide to governmental policy. Several indigenous organizations called for the adoption of Part VIII as it stood.

97. With regard to Part VIII, several Governments and some indigenous organizations called for the clarification of the provisions. With respect to article 38, some Governments noted that international law does not create a legal obligation to provide financial support for the development of indigenous culture. Several Governments expressed their concern with regard to the term "mutually acceptable" in article 39 and called for it to be clarified. Some Governments stated that they would prefer language which emphasized that disputes would be solved through negotiations or existing legal mechanisms. Some States also noted that they could not support a provision giving indigenous people the right to opt out of the national legal system. A few indigenous organizations stated that the reference to indigenous legal systems should be strengthened in article 39.

98. Indigenous organizations emphasized the need for mechanisms for resolving conflicts to be established at the international level owing to the inability of national legal systems to resolve conflicts between indigenous peoples and States. Such mechanisms must be established with the full participation of indigenous peoples. Indigenous organizations pointed to the potential of such mechanisms in promoting cooperation and goodwill between States and indigenous peoples.

99. With regard to articles 40 and 41, while some Governments supported a greater commitment by the United Nations, many Governments stated that the role of the Organization in realizing and implementing the declaration had to

be more specifically defined. In connection with the phrase "the creation of a body at the highest level with special competence" in article 41, some Governments and several indigenous organizations referred to the possible establishment of a permanent forum for indigenous people. Several indigenous organizations called for the speedy establishment of such a forum. Some Governments, although supportive of the establishment of such a forum, called for further discussion on the matter and questioned whether the issue should be addressed in the draft declaration. Many other Governments opposed the inclusion of a reference to the creation of a body with special competence to monitor compliance with a non-binding instrument. One Government stated that it could not accept provisions containing arrangements under which indigenous people and the United Nations would be in direct contact with each other and without the Government as intermediary.

J. Part IX

100. Some Governments stated that it would be preferable to look at article 42, after the contents of the declaration had been set so that the relevance of its purpose and meaning could be clarified. Several indigenous organizations reaffirmed the need to recognize the standards contained in the draft declaration as minimum standards, creating the foundation for the further development of indigenous human rights. Some indigenous organizations stated that if the contents of the declaration were watered down the rights recognized in the declaration would no longer be considered the minimum standards by indigenous peoples.

101. Many Governments were of the opinion that article 43 as it stood should be moved to Part I, as suggested in the technical review.

102. Several Governments and indigenous organizations expressed the opinion that article 44 was acceptable as it stood, while other Governments suggested that its language should be simplified.

103. With regard to article 45, some Governments suggested including references to different sources of international law. One Government stated that article 45 was superfluous because its contents were obvious. Indigenous organizations stated that the language of article 45 should be retained to ensure that States do not interpret anything in the declaration in a manner that might promote the destruction of the rights specified therein.